

and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished, pursuant to section 3123(b) or section 3125 of this title, to the officer of a law enforcement agency, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

[See main edition for text of (c) to (e)]

(As amended Pub. L. 101-647, title XXXV, § 3575, Nov. 29, 1990, 104 Stat. 4929.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-647 substituted "section 3123(b)" for "subsection 3123(b)".

§ 3127. Definitions for chapter

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS

§ 3141. Release and detention authority generally

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-647, title IX, § 901, Nov. 29, 1990, 104 Stat. 4826, provided that: "This title [amending sections 3143 and 3145 of this title] may be cited as the 'Mandatory Detention for Offenders Convicted of Serious Crimes Act'."

§ 3142. Release or detention of a defendant pending trial

[See main edition for text of (a) and (b)]

(c) **RELEASE ON CONDITIONS.**—(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

[See main edition for text of (A)]

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

[See main edition for text of (i) to (x)]

(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

[See main edition for text of (xiii) and (xiv), (2) and (3); (d)]

(e) **DETENTION.**—If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial. In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

[See main edition for text of (1) to (3)]

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), or an offense under section 924(c) of title 18 of the United States Code.

(f) **DETENTION HEARING.**—The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community—

(1) upon motion of the attorney for the Government, in a case that involves—

[See main edition for text of (A) and (B)]

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.); or

[See main edition for text of (D), (2)]

The hearing shall be held immediately upon the person's first appearance before the judicial

officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days, and a continuance on motion of the attorney for the Government may not exceed three days. During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

(g) **FACTORS TO BE CONSIDERED.**—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

[See main edition for text of (1) to (3)]

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

[See main edition for text of (h) to (j)]

(As amended Pub. L. 101-647, title X, § 1001(b), title XXXVI, §§ 3622-3624, Nov. 29, 1990, 104 Stat. 4827, 4965.)

REFERENCES IN TEXT

The Maritime Drug Law Enforcement Act, referred to in subssecs. (e) and (f)(1)(C), is Pub. L. 96-350, Sept. 15, 1980, 94 Stat. 1159, as amended, which is classified generally to chapter 38 (§ 1901 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1901 of Title 46, Appendix, and Tables.

AMENDMENTS

1990—Subsec. (c)(1)(B)(xi). Pub. L. 101-647, § 3622, amended cl. (xi) generally. Prior to amendment, cl. (xi) read as follows: "execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or such percentage of the money as the judicial officer may specify;"

Subsec. (c)(1)(B)(xii). Pub. L. 101-647, § 3623, amended cl. (xii) generally. Prior to amendment, cl. (xii) read as follows: "execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the person as required;"

Subsecs. (e), (f)(1)(C). Pub. L. 101-647, § 1001(b), substituted "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)" for "section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)".

Subsec. (g)(4). Pub. L. 101-647, § 3624, substituted "subsection (c)(1)(B)(xi) or (c)(1)(B)(xii)" for "subsection (c)(2)(K) or (c)(2)(L)".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by sections 3622 to 3624 of Pub. L. 101-647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101-647, set out as an Effective Date note under section 3001 of Title 28, Judiciary and Judicial Procedure.

§ 3143. Release or detention of a defendant pending sentence or appeal

(a) **RELEASE OR DETENTION PENDING SENTENCE.**—(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence, other than a person for whom the applicable guideline promulgated pursuant to 28 U.S.C. 994 does not recommend a term of imprisonment, be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c). If the judicial officer makes such a finding, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c).

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless—

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

(B) the judicial officer finds by clear and convincing evidence that the person is not

likely to flee or pose a danger to any other person or the community.

(b) **RELEASE OR DETENTION PENDING APPEAL BY THE DEFENDANT.**—(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds—

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—

- (i) reversal,
- (ii) an order for a new trial,
- (iii) a sentence that does not include a term of imprisonment, or
- (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title, except that in the circumstance described in paragraph (b)(2)(D),¹ the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence.

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained.

[See main edition for text of (c)]

(As amended Pub. L. 101-647, title IX, § 902(a), (b), title X, § 1001(a), Nov. 29, 1990, 104 Stat. 4826, 4827.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-647, § 902(a), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), the judicial officer” for “The judicial officer”, and added par. (2).

Subsec. (a)(1). Pub. L. 101-647, § 1001(a), substituted “awaiting” for “waiting”.

Subsec. (b). Pub. L. 101-647, § 902(b), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), the judicial officer” for “The judicial officer”, redesignated former pars. (1) and (2) as subpars. (A) and (B), redesignated former subpars. (A) to (D) as cis. (i) to (iv), respectively, of subpar. (B), and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3145, 3156 of this title.

§ 3145. Review and appeal of a release or detention order

[See main edition for text of (a) and (b)]

(c) **APPEAL FROM A RELEASE OR DETENTION ORDER.**—An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly. A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.

(As amended Pub. L. 101-647, title IX, § 902(c), Nov. 29, 1990, 104 Stat. 4827.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101-647 inserted at end “A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.”

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3152. Establishment of pretrial services

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3153. Organization and administration of pretrial services

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title; title 5 section 4521.

§ 3154. Functions and powers relating to pretrial services

Pretrial services functions shall include the following:

- (1) Collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, including information relating to any danger that the release of such person may pose to any other person or the community, and, where appropriate, include a recommendation as to whether such individual should be re-

¹ So in original. Probably should be paragraph “(1)(B)(iv).”

leased or detained and, if release is recommended, recommend appropriate conditions of release.

[See main edition for text of (2) to (12)]

(As amended Pub. L. 101-647, title XXXV, § 3576, Nov. 29, 1990, 104 Stat. 4929.)

AMENDMENTS

1990—Par. (1). Pub. L. 101-647 substituted “community, and, where appropriate, include a recommendation as to whether such individual should be released or detained and, if release is recommended, recommend appropriate conditions of release.” for “community” and all that followed through end of par. (1).

CHAPTER 208—SPEEDY TRIAL

§ 3161. Time limits and exclusions

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3165. District plans—generally

[See main edition for text of (a) to (d)]

(e) *[See main edition for text of (1)]*

(2) Prior to the expiration of the thirty-six calendar month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the fourth and fifth twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c).

[See main edition for text of (3); (f)]

(As amended Pub. L. 101-647, title XXXV, § 3577, Nov. 29, 1990, 104 Stat. 4929.)

AMENDMENTS

1990—Subsec. (e)(2). Pub. L. 101-647 substituted “twelve-calendar-month” for “twelve-calendar month”.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3166. District plans—contents

[See main edition for text of (a)]

(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this chapter, including:

[See main edition for text of (1) to (7)]

(8) the incidence of, and reasons for each thirty-day extension under section 3161(b) with respect to an indictment in that district; and

[See main edition for text of (9); (c) to (f)]

(As amended Pub. L. 101-647, title XXXV, § 3578, Nov. 29, 1990, 104 Stat. 4929.)

AMENDMENTS

1990—Subsec. (b)(8). Pub. L. 101-647 substituted “extension” for “extention”.

§ 3168. Planning process

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3170. Speedy trial data

(a) To facilitate the planning process, the implementation of the time limits, and continuous and permanent compliance with the objectives of this chapter, the clerk of each district court shall assemble the information and compile the statistics described in sections 3166(b) and 3166(c) of this title. The clerk of each district court shall assemble such information and compile such statistics on such forms and under such regulations as the Administrative Office of the United States Courts shall prescribe with the approval of the Judicial Conference and after consultation with the Attorney General.

(b) The clerk of each district court is authorized to obtain the information required by sections 3166(b) and 3166(c) from all relevant sources including the United States Attorney, Federal Public Defender, private defense counsel appearing in criminal cases in the district, United States district court judges, and the chief Federal Probation Officer for the district. This subsection shall not be construed to require the release of any confidential or privileged information.

[See main edition for text of (c)]

(As amended Pub. L. 101-647, title XXXV, § 3579, Nov. 29, 1990, 104 Stat. 4929.)

AMENDMENTS

1990—Subsecs. (a), (b). Pub. L. 101-647 substituted “sections 3166(b) and 3166(c)” for “sections 3166(b) and (c)”.

§ 3172. Definitions

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 209—EXTRADITION

Sec.

3196. Extradition of United States citizens.

AMENDMENTS

1990—Pub. L. 101-623, § 11(b), Nov. 21, 1990, 104 Stat. 3356, added item 3196.